

Hon. Kymberly K. Evanson

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
EDUCATION, et al.,

Defendants.

CASE NO. C25-1228-KKE

**NOTICE OF MOTION AND  
DEFENDANTS' MOTION FOR RELIEF  
FROM DEADLINES**

(Note on motion calendar for:  
September 24, 2025)

Defendants Linda McMahon, in her official capacity, and the United States Department of Education (collectively, "the Department"), through their attorneys, Teal Luthy Miller, Acting United States Attorney for the Western District of Washington and Brian C. Kipnis, Assistant United States Attorney, hereby move this Court, pursuant to Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure, and LCR 7(d)(2) of the Local Rules of the United States District Court for the Western District of Washington, and based on good cause, for an order (1) extending their deadline to file their reply in response to the States' opposition to their motion to dismiss to October 14, 2025; and (2) moving the hearing on the Department's motion to dismiss from October 7 to an appropriate date as determined by the Court.

This motion is made and based on the pleadings and papers filed herein and the Declaration of Brian C. Kipnis.

1 DATED this 10th day of September 2025.

2 Respectfully submitted,

3 TEAL LUTHY MILLER  
4 Acting United States Attorney

5 /s/ Brian C. Kipnis

6 BRIAN C. KIPNIS

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

The Department seeks an order pursuant to Federal Rule of Civil Procedure 6(b)(1)(A) extending by approximately two weeks its time to file a reply to the opposition of Plaintiffs, the States of Washington, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, New Mexico, New York, Nevada, Oregon, Rhode Island, Wisconsin, the Commonwealth of Massachusetts, and the People of the State of Michigan (collectively, “the States”), to the Department’s pending motion to dismiss.<sup>1</sup> The Department also requests that the Court move the currently set hearing date on its motion to dismiss.

This request is made necessary because the attorney of record who represents the Department in this lawsuit will be departing the United States on Monday, September 15, for a three-week overseas vacation that was planned months in advance and for which substantial personal funds have already been committed. The Department’s attorney does not return to work until Monday, October 6.

This request was not made necessary by any dilatory conduct of the Department’s counsel. Indeed, counsel for the Department has worked assiduously on the defense of this lawsuit since it was assigned to him on or about July 5, 2025, particularly in preparing the Department’s opposition to the States’ motion for a preliminary injunction and in preparing and filing the Department’s motion to dismiss. The Department is unaware of any prejudice to the States by the granting of this motion. Assuming for purposes of argument that the States are lawfully representing the interests of all discontinued grantees of SBMH and MHSP grants within their territories in this lawsuit, the discontinuation decisions that the States are challenging do not take effect until 2026.

Before filing this motion, the Department’s counsel contacted the States’ counsel in an effort to reach an agreement that would obviate the need for this motion. Unfortunately, the parties were not able to reach an agreement, necessitating the filing of this motion.

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<sup>1</sup> The Department has no objection to a commensurate extension of time for the States’ opposition memorandum.

1 **STATEMENT OF FACTS**

2 The States bring this action to invalidate the Department's discontinuation of certain grant  
3 agreements entered into with school districts, regional education agencies, state education  
4 departments, and universities located within their borders (collectively, the "Grantees") pursuant to  
5 the Department's Mental Health Service Professional Developmental Grant Program (MHSP) and its  
6 School-Based Mental Health Services Grant Program (SBMH). Notice of the discontinuation of the  
7 grants in question were provided to the grantees on or about April 29, 2025. Dkt. # 1, ¶ 6. The  
8 discontinuances do not take effect until January 1, 2026. *See* Dkt. # 1, ¶ 80.

9 The States filed their complaint in this action on June 30, 2025. Dkt. # 1. They moved for a  
10 preliminary injunction on July 8, 2025. Dkt. # 49. The Department filed a timely opposition to the  
11 States' motion on August 6, 2025. Dkt. # 147. On September 5, 2025, the Court heard oral  
12 argument on the States' motion for a preliminary injunction. Also, on that same date, the  
13 Department filed its timely motion to dismiss the complaint. Dkt. # 161.

14 Aware that his upcoming vacation plans would conflict with the briefing schedule prescribed  
15 by the local rules of this Court with respect to the Department's motion to dismiss, the Department's  
16 counsel contacted the States' counsel on September 5 to discuss the possibility of a negotiated  
17 extension of the briefing schedule. Declaration of Kipnis, ¶¶ 7-8. While those discussions were in  
18 progress, the Court, on September 9, issued a *sua sponte* order renoting the States' preliminary  
19 injunction motion and the Department's motion to dismiss to October 7, establishing a briefing  
20 schedule for the Department's motion to dismiss, including a deadline for the filing of the  
21 Department's reply of September 30, and setting a hearing on the Department's motion to dismiss  
22 for October 7, 2025. Dkt. # 162.

23 The Department's counsel will be overseas on September 30, 2025. Decl. of Kipnis, ¶ 10.  
24 The date of the hearing occurs on his second day back at work after three weeks without access to  
25 his DOJ devices. *Id.*

26 Discussions between the parties continued after the Court issued its September 9 order. *Id.* at  
27 ¶ 12. Ultimately, the parties were unable to reach agreement on a negotiated extension of time to  
28 propose to the Court, making this motion necessary. *Id.*

1 This request is necessary because of longstanding vacation plans that make it impossible for  
 2 the Department's counsel to meet the reply filing deadline established by the Court or to responsibly  
 3 prepare for oral argument. *Id.* Mindful of the need not to unduly delay the course of litigation, the  
 4 Department has requested the minimum time believed by its counsel to be necessary under the  
 5 circumstances. *Id.*

## 6 ARGUMENT

### 7 I. FOR GOOD CAUSE THE COURT MAY EXTEND THE TIME TO ACT

8 Federal Rule of Civil Procedure 6(b) provides:

9 (1) In General. When an act may or must be done within a specified time, the court may, for  
 10 good cause, extend the time:

11 (A) with or without motion or notice if the court acts, or if a request is made, before the  
 original time or its extension expires . . .

12 In this Circuit, requests for extensions of time that are determined under the good cause  
 13 standard should "normally ... be granted in the absence of bad faith on the part of the party seeking  
 14 relief or prejudice to the adverse party." *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259  
 15 (9th Cir. 2010).

16 The Department's counsel is not acting in bad faith. This request is made necessary to  
 17 accommodate longstanding vacation plans that preexisted the filing of this lawsuit. Nor is the need  
 18 to extend the deadlines in this case occasioned by any dilatory conduct on the part of the  
 19 Department's counsel. On the Department's behalf, its counsel filed a timely opposition to the  
 20 States' motion for a preliminary injunction and a timely motion to dismiss the States' complaint.

21 Although acting in good faith, the Department's counsel will be unable to file the  
 22 Department's reply to the States' opposition to its motion to dismiss within the time prescribed by  
 23 the Court's September 9 order because he will be overseas on vacation and without access to his  
 24 government-issued computer. Also, counsel for the Department does not believe he will be able to  
 25 responsibly prepare for an oral argument on his motion to dismiss that occurs on the second day of  
 26 his return from vacation.

27 The Department is unaware of any prejudice that the States will incur as the result of the  
 28 granting of this request for a two-week extension of the deadlines set by the Court in its September 9

1 order. While the States would obviously prefer to have the Court make rulings in this case sooner  
 2 rather than later, such a preference does not constitute tangible prejudice. As the States have alleged  
 3 in their complaint, the discontinued grantees whose interests the States purport to represent in this  
 4 action may continue to fully rely on their grant funding through December 31, 2025.

5 Thus, the requested extension of time is proper under Federal Rule of Civil Procedure  
 6 6(b)(1)(A), and the Department respectfully requests that its motion be granted.

### 7 CONCLUSION

8 For the foregoing reasons, the Department respectfully requests that the Court grant the  
 9 Department's motion for good cause and extend the time within which the Department may reply to  
 10 the States' opposition to their motion to dismiss to October 14, 2025, and reset oral argument on the  
 11 Department's motion to a date that the Court deems appropriate after October 14, 2025.

### 12 CERTIFICATION

13 I certify that this memorandum contains 1,471 words, in compliance with the local civil  
 14 rules.

15 DATED this 10th day of September 2025.

16 Respectfully submitted,

17  
 18 TEAL LUTHY MILLER  
 19 Acting United States Attorney

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